STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT
ON APPEAL FROM THE MICHIGAN COURT OF APPEALS AND THE
CIRCUIT COURT FOR THE COUNTY OF GENESSEE

CALEB GRIFFIN,

Plaintiff-Appellant,

v

SWARTZ AMBULANCE SERVICE,

Defendant-Appellee,

and

SARAH ELIZABETH AURAND

Defendant.
_____/

MSC Docket No. 159205

COA Docket No. 340480

Lower Court No.: 14-103977-NI

DEFENDANT SWARTZ AMBULANCE SERVICE'S SUPPLEMENTAL BRIEF

ORAL ARGUMENT REQUESTED

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Introduction

This Court is, by now, well aware of the factual nature of this dispute. Plaintiff Caleb Griffin was injured in a motor vehicle accident on October 7, 2012, when the vehicle his cousin was driving rolled over. Plaintiff suffered a dislocated right knee. An ambulance owned by Defendant Swartz Ambulance Service (hereinafter, "Swartz") was summoned to the scene. As mandated by statute, the ambulance was staffed with two employees of Swartz: Mary Shifter, an emergency medical technician ("EMT"), and Greg LaPointe, a paramedic. Shifter and LaPointe treated Plaintiff at the scene of the accident and prepared him for transport to the emergency room. After leaving the scene of the accident, with Shifter driving the ambulance, the ambulance was involved in a very slow-speed automobile accident. Plaintiff was then transferred to another ambulance and transported to a hospital, where multiple surgeries were not successful in salvaging Plaintiff's knee and there was ultimately a partial amputation.

The instant lawsuit is the third lawsuit brought by Plaintiff against various individuals, entities, and medical professionals. Specifically, Plaintiff claims that the owners of the vehicles involved in the second automobile accident, Defendant Sarah Aurand and Defendant Swartz, can be deemed liable under the general automobile owner's liability statute, MCL 257.401. Lest there be any doubt, Plaintiff specifically alleged that the delay in transporting Plaintiff to the hospital was a cause of his damages. Quite obviously, if delay in transporting Plaintiff to the hospital was a cause of Plaintiff's damages, then more timely transportation was part and parcel of Plaintiff's treatment for his injuries. Plaintiff's specific allegations confirm that the timeliness of his transfer was pertinent to his overall treatment.

The problem for Plaintiff is that the Emergency Medical Services Act ("EMSA"), MCL 333.20901 et seq., provides immunity to EMTs, paramedics, and ambulance operations for acts and omissions in the treatment of a patient, except for circumstances involving gross negligence or willful misconduct. Plaintiff urged the lower courts to adopt an overly narrow definition of "treatment" that would render the immunity nugatory and expose medical first responders performing nearly every possible task to potential liability. The lower courts rejected those arguments. This Court has directed the parties to address whether operating an ambulance constitutes an act in the treatment of Plaintiff. Defendant respectfully contends that this Court should answer that question affirmatively, and either deny Plaintiff's application for leave to appeal or expressly affirm the results below.

Counter-Statement of Facts

The parties do not have substantial disagreement regarding the general factual nature of this case. Instead, the primary dispute is regarding the legal implication of these basic facts. Defendant incorporates by reference its statement of facts section from its prior briefing and will merely emphasize a few factual issues that provide a more complete background.

First, it must be emphasized that this is the third of three lawsuits filed by Plaintiff against different individuals and entities. Plaintiff first sued his cousin, Jamey Griffin, for causing the primary vehicle accident that injured Plaintiff's leg. That lawsuit settled. The second lawsuit was a medical malpractice action against the hospital physicians who treated Plaintiff and failed to save his leg. Upon information and belief, this lawsuit also settled. Thus, even before this third lawsuit was filed, Plaintiff had already had file two lawsuits. Plaintiff has already had his proverbial "day in court" twice. Needless to say, as the third lawsuit

chronologically, this also provides some indication of the relative significance (or lack thereof) of these three lawsuits.

Second, Plaintiff specifically alleged in the instant lawsuit that the ambulance accident delayed Plaintiff's arrival at the hospital—meaning that the delayed transportation was at least part of the basis for Plaintiff's lawsuit against Defendant. Amended Complaint, ¶ 14. This merely underscores the obvious reality that timely and successful transportation by an ambulance is inextricably part of the overall treatment that an ambulance provides a patient. Stated otherwise, assuming that Plaintiff is correct in its allegation that Defendant did not provide Plaintiff timely transportation to the hospital, with the associated delay contributing to his damages, then timely transportation was part and parcel of Plaintiff's overall "treatment."

Third, the EMSA does not confer complete immunity. Instead, MCL 333.20965(1) allows a recovery for gross negligence. Here, the trial court granted Plaintiff ninety days to engage in discovery to prove that Defendant was grossly negligent. Trial court Order, March 21, 2016, Appendix A, page 3d. Despite being given 90 days of discovery, Plaintiff never even mounted an argument that Defendant's acts or omissions rose to a level of gross negligence. It is for this reason that Plaintiff's lawsuit was dismissed. Plaintiff merely raises the instant legal challenge to avoid operation of the plain language of the statutory scheme limiting him to a gross negligence claim.

Additional facts may be set forth below where pertinent to the issues and subissues raised in this appeal.

ARGUMENT

I. THIS COURT SHOULD EITHER DENY PLAINTIFF'S APPLICATION FOR LEAVE TO APPEAL OR EXPRESSLY AFFIRM THE LOWER COURTS' RULINGS THAT SWARTZ WAS ENTITLED TO SUMMARY DISPOSITION UNDER THE EMSA GIVEN THE PLAIN LANGUAGE OF THE STATUTORY SCHEME AND A CLEAR LEGISLATIVE INTENT.

This Court has requested that the parties address the issue of "whether the operation of the ambulance in this case by the appellee's employee constitutes an "act[] . . . in the treatment of a patient" within the meaning of MCL 333.20965(1)." This Court has also requested that the parties not merely restate arguments previously raised. Although some amount of overlap is unavoidable, Defendant will endeavor to focus its argument on issues not raised in its prior briefing.

a. Statutory Overview

The Michigan Legislature has enacted a statutory scheme to provide immunity to providers of emergency services within the EMSA, MCL 333.20901 et seq. 25 years ago, this Court explained that the "The Legislature enacted the EMSA in an effort to (1) provide for the uniform regulation of emergency medical services, and (2) **limit emergency personnel's exposure to liability**." See *Jennings v Southwood*, 446 Mich 125, 133, 135; 521 NW2d 230 (1994). See *Jennings, supra* at 133 (emphasis added). The preamble to the Public Health Code, Act 368 of 1978, of which the EMSA was included, recognizes that a purpose of the act was "to provide certain immunity from liability." Thus, it is beyond reasonable dispute that at least one of the primary goals of the EMSA was to limit liability by providing immunity.

To effectuate the legislative intent to limit liability and provide immunity, MCL 333.20965 provides as follows regarding the specific immunity conferred by EMSA:

> (1) Unless an act or omission is the result of gross negligence or willful misconduct, *the acts or omissions of a medical first responder*,[1] *emergency medical technician*,[2] emergency medical technician specialist, *paramedic*[3] . . . , *do not impose liability in the treatment of a patient*[4] *on those individuals* . . . . [MCL 333.20965(1); emphasis added.]

Although the Legislature included additional phrases within this subsection, when pared down to its relevant language, the subsection merely provides for the unremarkable conclusion that EMTs and paramedics cannot be sued for their acts and omissions in the treatment of a patient absent gross negligence or willful misconduct.

Defendant is certainly an entity generally entitled to the protections afford by MCL 333.20965(1). MCL 333.20965(1) defines "medical first responders" to specifically include a driver of an ambulance:

> [A]n individual who has met the educational requirements of a department approved medical first responder course and who is licensed to provide medical first response life support as part of a medical first response service **or as a driver of an ambulance that provides basic life support services only**. Medical first responder does not include a police officer solely because his or her police vehicle is equipped with an automated external defibrillator. [MCL 333.20906(8) (emphasis added).]

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[1] The Legislature expressly defined a "[m]edical first responder" to mean "an individual who has met the educational requirements of a department approved medical first responder course and who is licensed to provide medical first response life support as part of a medical first response service or as a driver of an ambulance that provides basic life support services only. Medical first responder does not include a police officer solely because his or her police vehicle is equipped with an automated external defibrillator." MCL 333.20906(8).

[2] "'Emergency medical technician' means an individual who is licensed by the department to provide basic life support." MCL 333.20905(7).

[3] "'Paramedic' means an individual licensed under this part to provide advanced life support." MCL 333.20908(5).

[4] The word "patient" was defined by the Legislature to mean "an emergency patient or a nonemergency patient." MCL 333.20908(6). The Legislature also provided definitions for the phrases "emergency patient" and "non-emergency patient," but did not use either term within MCL 333.20965(1). Instead, the Legislature used the broader term patient, further indicating an intent to apply the immunity broadly.

The definition of "medical first responder" expressly includes the driver of an ambulance that provides basic life support services. MCL 333.20965(1) also expressly extends liability to a "life support agency," which is defined in the statute as "**an ambulance operation**, nontransport prehospital life support operation, aircraft transport operation, or medical first response service." MCL 333.20906(1) (emphasis added). Thus, whether based on vicarious liability for the actions of its EMTs and paramedics, or via direct liability as an ambulance operator, Defendant is an entity potentially entitled to immunity pursuant to MCL 333.20965(1).

MCL 333.20965(1) provides immunity to an entity, such as Defendant, if it arises out of acts or omissions "in the treatment of a patient." The use of the word "patient" was not inadvertent or accidental. The Legislature provided specific and deliberately different definitions for the phrases "patient," MCL 333.20908(6); "emergency patient," MCL 333.20905(9); and "non-emergency patient," MCL 333.20908(1). The definition for patient includes both "emergency patient" and "non-emergency patient," MCL 333.20908(6), confirming that the Legislature intended for the broadest and most inclusive application of immunity possible. The Legislature could have limited the immunity conferred by MCL 333.20965(1) to only emergency patients, but instead chose to confer broad immunity with respect to acts and omission relating to all patients.

The importance of this broad definition of "patient" is that it is of absolutely no relevance whether Plaintiff would be characterized as an "emergency patient" or "non-emergency patient." To be sure, it is fairly obvious that Plaintiff's leg injury was significant enough to require emergency room care, as necessary to qualify Plaintiff as an emergency patient pursuant to MCL 333.20905(9). However, the immunity conferred by MCL 333.20965(1) would apply without

regard to the seriousness of the patient's condition. Therefore, Plaintiff in this matter was unquestionable a "patient" for purposes of MCL 333.20965(1).

The dispositive question, as this Court has identified, is whether Defendant's alleged acts or omissions were "in the treatment of" Plaintiff. For ease of reference, Defendant will devote the following subsection to this issue.

b. Dictionary Definitions Confirm That the Operation of the Ambulance Was an Act "in the Treatment of" Plaintiff Pursuant to the EMSA Statutory Scheme and MCL 333.20965(1)

As noted above, the question to be resolved in this appeal is whether the transportation of Plaintiff to the emergency room can fairly be deemed an act "in the treatment of" Plaintiff. Although the Legislature provided numerous definitions for phrases in the EMSA, the Legislature did not provide a definition for the phrase "in the treatment of." The Legislature also declined to provide a definition for the word "treatment."

Defendant respectfully contends that the Legislature's decision to not define "treatment" or "in the treatment of" was not necessarily an oversight. The Legislature may have determined that it was best to leave "treatment" and "in the treatment of" undefined to allow for expansion, contraction, and evolution of the phrases over time. Indeed, it is very difficult to provide an exhaustive list of actions that constitute treatment without inadvertently excluding other means and methods that should have been included. As an example, applying "leeches" may have been "treatment" in centuries past, but that practice fell into severe disfavor for many decades and would not have qualified as "treatment." Now, however, the use of leeches is returning as a potentially acceptable method of surgical healing. The statutory flexibility may have been intentional to allow common practices to determine what constitutes "treatment." The decision to not define "treatment" or "in the treatment of" cannot necessarily be deemed a mistake, but

should be recognized as an intentional decision by the Legislature to allow for modification over time to include or exclude certain means and methods.

Even so, in circumstances where the Legislature does not define a phrase or term, this Court will simply construe the phrase or term "in accordance with its ordinary and generally accepted meaning." *Oakland Co Bd of Co Rd Comm'rs v Mich Prop & Cas Guaranty Ass'n*, 456 Mich 590, 604; 575 NW2d 751 (1998). In addition, this Court "may consult dictionary definitions when terms are not expressly defined by a statute." *Id*. Thus, this Court has two options: (1) construe the phrase or word according to its ordinary and generally accepted meaning; or (2) consult dictionary definitions.

Defendant further observes that the Legislature did not use an active voice ("treating a patient"), but instead used a prepositional phrase with a passive voice ("in the treatment of a patient"). This Court "may not assume that the Legislature inadvertently made use of one word or phrase instead of another." *Robinson v Detroit*, 462 Mich. 439, 459; 613 N.W.2d 307 (2000). The Legislature's use of the passive voice cannot be dismissed as inadvertent, but should instead be construed as an intentional decision for the immunity to be conferred broadly, rather than narrowly. It is this passive voice that allows "omissions" from treatment to be included within the definition. Indeed, actions (and omissions) "in the treatment of a patient" include what transpires (or fails to transpire) before or after some specific act of treatment. As one example, this would include the decision to undertake a treatment, not just the performance of the treatment itself.[5] The Legislatures use of the broadening phrase "in the treatment of," rather than the narrower active voice, cannot be construed as inadvertent and must be given full effect.

[5] As an example, the decision to splint a wound may be a correct or negligently incorrect decision; however, the actual splinting of the wound may also be done correctly or negligently

As will be explained below, Defendant respectfully contends that the generally accepted meanings and the Merriam-Webster Dictionary definitions align, confirming that the Michigan Court of Appeals majority did not err in concluding that MCL 333.20965(1) applied to Defendant's transportation of Plaintiff to the emergency room.

i. The Merriam-Webster Dictionary and Generally Accepted Meanings Align and Best Effectuate the Clear Legislative Intent of the EMSA

The Court of Appeals majority resolved this issue by consulting the Merriam-Webster dictionary (11th edition). Court of Appeals opinion, Appendix B, 4d-8d. Michigan's appellate judiciary has consulted this dictionary, which traces back to the 1828 Webster dictionary, on hundreds of occasions in recent years. The Merriam-Webster online dictionary[6] provides essentially the same definition for the word "treatment":

1a: the act or manner or an instance of treating someone or something : handling, usage the star requires careful treatment
b: the techniques or actions customarily applied in a specified situation

Applying these definitions confirms that transporting a patient to the emergency room via ambulance is "in the treatment of " that patient.[7]

If the definition of "treatment" is akin to "handling," then certainly the ambulance and both staff members were "handling" Plaintiff when transporting him to the emergency room, as well as performing numerous other tasks. Similarly, the "actions customarily applied" by

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incorrect. The broad definition of "treatment" includes both the initial decision and the implementation of the decision.

[6] https://www.merriam-webster.com/dictionary/treatment

[7] The majority noted that the first definition of "treatment" would "include the handling of a patient in an ambulance or techniques customarily applied when caring for ambulance patients, consistent with the training of first responders." Appendix B, 8d. The Court also noted the applicability of the second definition, where "treatment" would include "activities by first responders acting within the scope of their duties and training as first responders." *Id*. Again, inasmuch as the statute issue applied to emergency medical services, it would be absurd to construe the statute without specifically contemplating a definition applicable to such individuals and entities.

ambulance staff to emergency patients includes transporting them to the emergency room via ambulance, which is what Defendant was doing for Plaintiff at the time of the second accident. Simply stated, the dictionary definition from Merriam-Website confirms that transporting a patient to the emergency room by ambulance qualifies as actions "in the treatment of" that patient. Because Defendant was transporting Plaintiff via ambulance to the emergency room at the time of the incident, Defendant was "in the treatment of" Plaintiff at the time of the second accident and MCL 333.20965(1) applies.

In further support of this conclusion, Defendant observes that the provision of emergency services in Michigan falls within the jurisdiction of the Michigan Department of Health and Human Services ("MDHHS"). The MDHHS has a special website devoted to emergency medical services, which states as follows:

> The National Highway Traffic Safety Administration (NHTSA) describes Emergency Medical Services (EMS) as being at the juncture where healthcare, public health and public safety meet. EMS has evolved into an organized, coordinated and integrated system of care that requires a collaborative approach of a broad range of partners **to ensure that the right patient, gets to the right facility, in the right amount of time to improve outcomes**.
>
> The Division of EMS and Trauma within the Bureau of EMS, Trauma and Preparedness is charged with the responsibility for the development, coordination, and administration of a statewide emergency medical services system. There are several components to an effective and efficient EMS System including: regulatory (licensing of providers, agencies and vehicles) and policy functions (protocols and administrative rules in support of the Public Health Code), human resources and education, **transportation**, facilities, communications, trauma systems, public information, provider education, medical direction and pre-hospital clinical care, integration of care, data collection and analysis for quality initiatives, public health surveillance and improving patient outcomes, and emergency preparedness activities. As of 8/28/19, there are 28,804 EMS providers, 819 life support agencies, and 3,847 life support vehicles that are licensed by the State of Michigan.[8] [Emphasis added.]

[8] https://www.michigan.gov/mdhhs/0,5885,7-339-73970_5093_28508---,00.html

It is certainly interesting that the federal regulatory body that oversees emergency services is NHTSA—a transportation-related entity. But perhaps most interesting is how the MDHHS highlights that EMS strives to provide accurate and timely transportation to a facility for more comprehensive medical care.[9] Although Plaintiff zealously tries to bifurcate emergency medical services to carve out ambulance transportation from the definition of "treatment," MDHHS and NHTSA obviously acknowledge that transportation is an essential part of ensuring the most successful outcome for every patient.

At the opposite extreme from regulatory agencies, a lay person has no doubt that ambulance transportation to the emergency room is an integral part of emergency care. The phrase "Call an Ambulance" has been part of our lexicon for many years. And any child knows to associate an ambulance with transporting an injured person to the hospital. The reason to call an ambulance has always been the same--stabilize a seriously injured person and transport him or her by ambulance to a nearby emergency room for further care by a physician. In fact, a recent Michigan State publication observed as follows regarding the role of EMS:

> According to [Dan] Farrow the most important job of a paramedic is to provide life-saving stabilizing measures to sick or injured persons in the pre-hospital setting. The work paramedics do is vastly different than what is depicted on television and outcomes aren't always good despite heroic efforts. Farrow believes that the main service of a paramedic is providing safe, timely transportation of the sick and or injured to a place of appropriate care. [What paramedics want you to know, Pam Daniels, Michigan State University Extension - September 9, 2015.[10]]

[9] There is an MDHHS website promoting the EMT and paramedic professions. This website, located at www.michigan.gov/mdhhs/0,5885,7-339-73970_5093_28508_86966---,00.html, states as follows: "Both EMTs and paramedics provide emergency care and transportation and are critical links from the scene of an emergency to the health care system." Again, there can be no doubt that the transportation role of an ambulance and its staff is "critical" to the treatment of a seriously injured patient.

[10] https://www.canr.msu.edu/news/what_paramedics_want_you_to_know

Farrow, a 39-year-veteran paramedic left no doubt about it—the "**main service of a paramedic is providing safe, timely transportation of the sick and or injured to a place of appropriate care**." *Id.*; emphasis added. Indeed, no reasonable person calling an ambulance would be satisfied with an ambulance arriving with staffers to provide stabilization of the injury, without also offering or providing transportation to an emergency room for additional necessary care.

In this case, Plaintiff would undoubtedly have been shocked if Defendant had not offered to transport him from the scene of the first accident to the emergency room. Whatever non-transportation "treatment" Plaintiff would have received at the scene of the first accident would have been ineffective and incomplete, if not worthless, if not followed up on and expanded with the additional care to be received at the emergency room. Plaintiff did not need a paramedic to arrive at the scene and confirm that it was a serious injury. Plaintiff needed substantially more from Defendant, such as diagnosis, stabilization, wound cleaning, bandages, monitoring of vital signs, a suitable transportation vehicle, ongoing monitoring of his condition, and transportation to the emergency room. All of this was part of Plaintiff's "treatment," and "in the treatment of Plaintiff," as it would be for any emergency patient. In Plaintiff's zeal to pursue a better litigation outcome in this case, "common sense" has been sacrificed. Between common sense and the definition ascribed by the commonly-used Merriam-Webster dictionary, it is plainly apparent that Defendant's transport of Plaintiff to the emergency room was an act in the treatment of Plaintiff, as necessary for the MCL 333.20965(1) to apply.

Finally, the EMSA as a whole confirms that any definition of "treatment" or "in the treatment of a patient" must include transportation activities. When the Legislature enacted the EMSA, it plainly recognized the role of transportation within the services provided by first responders. First, there are numerous subsections with the EMSA that have titles that confirm

the transportation aspect of emergency services.[11] Second, several other EMSA statutes reference transportation and transportation protocols.[12]

If that were not enough, MCL 333.20921(3) prevents an ambulance from transporting a patient unless there are two individuals in the ambulance that meet certain minimum licensing standards:

> Except as provided in subsection (4) and section 20921a, an ambulance operation shall not operate, attend, or permit an ambulance to be operated while transporting a patient unless the ambulance is, at a minimum, staffed as follows:
>
> > (a) If designated as providing basic life support, with at least 1 emergency medical technician and 1 medical first responder.
> > (b) If designated as providing limited advanced life support, with at least 1 emergency medical technician specialist and 1 emergency medical technician.
> > (c) If designated as providing advanced life support, with at least 1 paramedic and 1 emergency medical technician.

This statute mandates that two licensed staffers will make up every ambulance staff. This statute further confirms that the lowest qualified member of any two-person EMS staff will be a licensed medical first responder. This means that only licensed emergency providers will ever drive an ambulance. At the same time, this also confirms that there will at least be an EMT (or

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[11] See e.g. MCL 333.20921b ("Transporting nonemergency patient in ambulance that is a rotary aircraft; duties of ambulance operation"); MCL 333.20924 ("Business or service of transportation of patients; licensed ambulance required; exceptions"); MCL 333.20926 through MCL 333.20929 (discussing nontransport prehospital life support operations); and MCL 333.20931 through MCL 333.20934 (discussing air transport operations). It is particularly noteworthy that non-transportation life support operations are sufficiently unique to require their own subsection of the statutory scheme.

[12] See e.g. MCL 333.20921c (discussing patient requests for rotary aircraft transportation); MCL 333.20938 (recognizing that ambulances may operate under emergency conditions); and MCL 333.20939 (allowing the use of any vehicle to transport an emergency patient under exceptional circumstances). This latter statutory is particularly noteworthy, as it acknowledges that in exceptional circumstances, the transportation of a patient may be important enough to dispense with requiring an ambulance for that transportation. Again, these numerous statutes merely confirm the interrelated nature of medical care and transportation to the treatment of emergency patients under the EMSA.

more advanced licensee) in the patient area of an ambulance while it is in operation. This is consistent with the prominent interplay between transportation and medical care in the treatment of a patient. When reading the EMSA as a whole, the unmistakable conclusion is that transportation of a patient to the emergency room must fall squarely within the Legislature's definition of "in the treatment of" a patient. Any other conclusion would be impermissibly absurd in light of the EMSA as a whole.

ii. The Other Dictionary Definitions Are Unworkable, Lead to Absurd Results, and Ultimately Support the Michigan Court of Appeals' Ruling

As noted above, the Merriam-Webster dictionary provides the best, most logical definition for the phrase "in the treatment of" and the word "treatment." In contrast, other dictionary definitions are unworkable and lead to numerous absurd results. One of the fundamental rules of statutory construction is to never construe a statute so literally that it would "produce an absurd and unjust result and would be clearly inconsistent with the purposes and policies of the act in question." *Salas v Clements*, 399 Mich 103, 109; 247 NW2d 889 (1976). The only dictionary definition that avoids absurd results is the definition from the Merriam-Webster dictionary.

The online Cambridge dictionary defines "treatment" as "the use of drugs, exercises, etc. to improve the condition of an ill or injured person, or to cure a disease . . . ."[13] This definition is similar to the dictionary definition used by the Michigan Court of Appeals in a prior unpublished decision, *Doe v Doe*, unpublished opinion per curiam of the Court of Appeals (Docket No. 285655, issued Sept. 17, 2009)(Attachment 3), rev'd in part on other grounds, 486 Mich 851 (2010). Plaintiff urged for the application of this decision below. Notably, even the dissenting

[13] https://dictionary.cambridge.org/us/dictionary/english/treatment.

Court of Appeals judge declined to adopt this unworkable definition. See Dissenting Opinion, Appendix C, 10d-11d.

As a preliminary matter, the "etc." included in this definition cannot be ignored, as it recognizes the obvious inability to provide an exhaustive "laundry list" of every aspect of treatment. Instead, the "etc." recognizes that "treatment" should be broad enough to include any means or methods that would "improve the condition of an . . . injured person." Here, Defendant's act of transporting Plaintiff to the emergency room was not the use of drugs or exercises, but it certainly was for the purpose of improving Plaintiff's condition as a seriously injured person in need of the advanced care available at an emergency room. Defendant certainly endeavored to get Plaintiff to that emergency room as quickly as possible to improve Plaintiff's condition.

Of course, if the definitions of "treatment" or "in the treatment of a patient" were limited to merely providing "drugs" and suggesting "exercises," this would lead to an absolute absurdity. Such a definition would seemingly be more appropriate for pharmacists or physical therapists. In fact, such a definition would rarely apply to any act by any EMT or paramedic.

Indeed, it is common sense that the typical patient requiring further care at an emergency room is not in any condition to substitute "exercise" for that care. In fact, in most cases, performing exercises and delaying transportation to the emergency room would result in a *negative*, rather than positive, outcome for that particular patient. Moreover, it is difficult to envision <u>any</u> patient summoning an ambulance to expect the EMS crew to advocate "exercise" as an appropriate remedy. Certainly, in Plaintiff's case, it would have been absurd for a paramedic or EMT (or emergency room physician, for that matter) to suggest "exercise" as the remedy for Plaintiff's serious leg injury.

Adding "drugs" to "exercises" does not alleviate this absurdity. Again, a patient requiring an ambulance and potential emergency care is not expecting the ambulance to just deliver "drugs." Moreover, ambulances do not contain a full pharmacy. In fact, there are only so many "drugs" that an ambulance will have at its disposal. The MDHHS website lists numerous lengthy protocols that apply to EMS providers; as it relates to medications, there are very detailed protocols regarding medications and the strict supervision of a participating hospital pharmacy required. Michigan Protocols, Section 9-5, Appendix E, page 88d. The entire protocol section for medicines refers to only a few dozen medications, several of which are available over-the-counter, such as acetaminophen, aspirin, ibuprofen, sodium bicarbonate (baking soda), and others. *Id*. Needless to say, there are few "drugs" available on any ambulance.

And beyond the lack of availability of "drugs" on an ambulance, there is also the issue of *which* first responders are even allowed to dispense these few medications. On a national basis, NHTSA issues National Emergency Medical Services Education Standards for EMTs, advanced EMTs, and paramedics. These education standards are available on the MDHHS website under the section for "Scope of Practice."[14] These standards are too lengthy to reasonably include within the appellate materials. However, what can certainly be gleaned from these materials is that EMTs are generally allowed to administer only the following medications:

I. Specific Medications
- A. EMT – Administer Medications
  1. Aspirin
  2. Oral glucose
  3. Oxygen

- B. EMT – Assisted Medications
  1. Inhaled bronchodilators

[14] https://www.michigan.gov/mdhhs/0,5885,7-339-73970_5093_28508_76840---,00.html.

2. Epinephrine
3. Nitroglycerin.[15]

In contrast, a paramedic is given instruction in several dozen medications.[16] If "treatment" means only the use of "drugs," virtually no act of an EMT would ever fall within the definition of "treatment." And an EMT providing an aspirin to a patient requiring emergency care falls well short of any sort of meaningful action for such a patient.

Even as to paramedics, although they are allowed to provide a few dozen medications, of the 385 pages of instructions for paramedics, only 10 pages are devoted to pharmacology. To be sure, there are certain medications that may be lifesaving to counter an allergic reaction or other specific condition. And certain pain management medications may be beneficial to the patient, even if not necessarily improving his or her condition. However, it defies logic to suggest that individuals requesting an ambulance are doing so to receive the few medications that a paramedic is allowed to dispense. In contrast, an ambulance is requested because there is an emergency situation involving a patient who requires stabilization and then transportation to the emergency room for the more advanced care available at the hospital.[17] Any definition of "treatment" that includes "drugs" and "exercise," but excludes "transportation," cannot reasonably be applied in the context of the EMSA. This dictionary definition simply fails.

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[15] https://www.michigan.gov/mdhhs/0,5885,7-339-73970_5093_28508_76840-403611--,00.html (see page 46 of the 212-page NHTSA EMT Instructional Guide). See relevant excerpts attached as Appendix G, 137d-138d.

[16] https://www.michigan.gov/mdhhs/0,5885,7-339-73970_5093_28508_76840-403620--,00.html (see pages 78 to 86 of the 385-page NHTSA Paramedic Instructional Guide). See relevant excerpts attached as Appendix H, 166d-176d.

[17] Again, the MDHHS prominently features these NHTSA educational standards. Moreover, the Michigan-specific protocols are symbol-coordinated to reflect which tasks can only be performed by paramedics and which medications can only be administered by paramedics. See Michigan Protocols, Section 9; Michigan Protocols, 78d-129d; See also "Key" to Michigan Protocols, Appendix F, 131d. This only confirms how rarely EMTs administer any medicine or "drugs."

The dissenting Court of Appeals judge, Michel J. Kelly, cited the Oxford English Dictionary (2d ed), which defines "treatment" as "[m]anagement in the application of remedies; medical or surgical application or service." Appendix C, 11d. Frankly, it is unclear exactly what the phrase "management in the application of remedies" could possibly mean without resort to other definitions. Similarly, "medical or surgical application or service" is a cumbersome phrase, at best, and simply leads to more words requiring definitions. Even assuming these practical and grammatical issues can be ignored, it is difficult to envision the Legislature contemplating *this* definition of "treatment" for the phrase "in the treatment of a patient" under the EMSA.

As an initial matter, Judge Kelly cited the above definition, but then tacitly acknowledged the unworkable nature of this definition by applying a different definition. Judge Kelly specifically concluded that Shifter "was not undertaking any action to manage plaintiff's injuries." Appendix C, 11d. Judge Kelly also appeared to rewrite the above definition from "management in the application of remedies" to "undertaking action to manage injuries." *Id*. This Court can see for itself that Judge Kelly cited one definition, but ultimately had to applyanother. Even worse, Shifter certainly *was* undertaking action to manage Plaintiff's injuries by transporting him to a hospital for the superior healthcare available for Plaintiff at that location.

In addition to the Judge Kelly's curious treatment of Shifter's responsibilities, there is also no explanation for his conclusory determination that LaPointe *was* providing treatment. Appendix C, 11d. There was no explanation of how LaPointe's actions fell within the dictionary definition advanced in the dissenting opinion. See *id*. At best, Judge Kelly appears to conclude that the paramedic was treating Plaintiff because he was *ipso facto* treating Plaintiff. *Id*. This

circular reasoning was the best that can be done with such an unworkable definition. Inasmuch as the Oxford English dictionary is incapable of being properly applied without circular reasoning, it should be disregarded as meaningless.

The "application of remedies" phrase in the definition attempts to treat EMTs and paramedics as quasi-physicians—those who are tasked with making a diagnosis of a condition, and then setting out the course of action to heal the injury or cure the illness (i.e. remedy the condition). But the role of a first responder is not to heal or cure the patient. The role of a first responder its to stabilize the patient and transport the patient to the emergency room. As one example, a first responder may suspect a broken leg, but the physician at the emergency room will be able to confirm a broken leg and determine the next steps to heal that leg (cast, surgery, etc.). A first responder may suspect a bacterial illness, but the physician at the emergency room will make the determination as to what bacteria is likely at issue and the appropriate antibiotic to cure the infection. The physician pursues remedies. The role of an EMT or paramedic is to get that patient (while still alive) to that physician for the advanced care that may lead to a cure or healing.

And "medical or surgical application or service" is not much better, as it is a cumbersome phrase that requires resort to other definitions. In fact, the dissenting Court of Appeals judge advocating for this definition either did not or could not apply this definition. Needless to say, there is no circumstance where "surgery" by a paramedic, much less an EMT, would be appropriate. It is common sense that physicians perform surgery; an EMT or paramedic is tasked with getting the patient to that surgeon, not performing the surgery. The phrases "surgical application" and "surgical service" are simply irrelevant to the EMSA or any tasks to be performed by those licensed under the EMSA.

And "medical application" and "medical service" are seemingly too vague to be helpful. Moreover, it is unclear how transporting a patient by ambulance to the emergency room is not a "medical service." Medicare pays for ambulance transportation to an emergency room.[18] Medicaid pays for ambulance transportation to an emergency room.[19] The IRS deems ambulance services a medical expense that can be deducted, while also treating it as a qualified medical expense for purposes of being paid out of a tax-avoiding Health Savings Account. See IRS Publication 502 (2018), 5. And private medical insurance typically covers some or all of the cost of ambulance transportation to an emergency room. A layperson would certainly consider ambulance transportation a medical service. At the other extreme, the federal government tasks NHTSA—the transportation agency—with regulating emergency medical services and ambulance operations. The federal government, private insurance companies, and lay persons all concur that ambulance transportation is a medical service. There is no logical, credible, or reasonable basis to conclude that ambulance transportation is *not* a "medical service." In sum, to whatever extent the dictionary definition chosen by the dissenting Court of Appeals judge can be applied without absurdity, it confirms that transporting Plaintiff to the emergency room was an act in the treatment of Plaintiff, as necessary for MCL 333.20965(1) to apply.

c. Plaintiff's Supplemental Brief Does Not Establish Lower Court Error

Plaintiff's Supplemental Brief raises several issues, none of which support a conclusion that the Michigan Court of Appeals' majority erred.

Plaintiff begins with an inaccurate and incorrect statement of the question presented (Plaintiff's brief, 9). Plaintiff's question presented begins by incorrectly suggesting that

[18] https://www.medicare.gov/coverage/ambulance-services
[19] https://www.hhs.gov/answers/medicare-and-medicaid/does-medicaid-cover-ambulances/index.html

Defendant was not operating the ambulance in an "emergency mode." Contrary to Plaintiff's suggestion, the use of lights and sirens on emergency vehicles is disfavored. In fact, there are articles suggesting that the use of lights and sirens causes more accidents than it prevents, without making a meaningful difference on arrival time at an emergency room.[20] The MDHHS website for EMS contains numerous "protocols," which are routinely made available on local medical authority websites. These protocols are to be followed by all emergency services providers.

There is an entire protocol devoted to "Services, such as the transportation of patients. Michigan Emergency Services Protocols, Appendix D, 88d-89d. Below are some of the topics of this particular section:

8.1 Cancellation/Downgrade of Call

8.2 Use of Emergency Lights and Sirens During Transport

8.3 Destination and Diversion Guidelines

8.4 High-Risk Delivery Transport Guidelines

8.5 Intercept Policy

8.6 Dispatch

8.7 Lights and Sirens Response to the Scene

8.8 Patient Prioritization

And there are specific rules dictating whether lights and sirens may be activated, which may vary within one particular transport of a patient:

B. Transporting a Patient

1. EMS units may transport patients using lights and sirens when:

[20] See https://www.jems.com/2017/01/31/the-case-against-ems-red-lights-and-siren-responses/.

> 2. The patient's condition meets Priority One prioritization level AND the condition is unstable or deteriorating AND there is a need to circumvent significant traffic delays and obstructions OR
> 3. The patient's condition requires immediate lifesaving intervention which cannot be accomplished by EMS personnel, with approved equipment AND there is a need to circumvent traffic delays or obstruction. [Michigan State Protocols, Section 8-2, 15d.]

Importantly, even with Priority 1[21] emergencies or other lifesaving interventions, lights and sirens are only activated if "there is a need to circumvent traffic delays or obstruction." Where, as here, Plaintiff was being transported to the emergency room late in the evening, there was simply no risk of traffic delays or obstructions that would require light and siren activation. This would have been the case if Plaintiff's condition was Priority 1, Priority 2, or Priority 3. Simply stated, the use of lights and sirens is irrelevant to whether the ambulance is urgently proceeding to an emergency room with an emergency patient.[22] Plaintiff is simply incorrect.

Plaintiff errs on page 10 by suggesting that the Legislature does not provide a "clear answer" as to "whether the statute immunizes 'medical treatment' or whether it immunizes non-medical negligence" (Plaintiff's supplemental brief, subissue A, 10). Defendant respectfully contends that this purported subissue is facially inaccurate.

MCL 333.20965(1) does not include the phrase "medical treatment." Instead, MCL 333.20965(1) uses the phrase "in the treatment of." MCL 333.20965(1) does not use the phrase "in the medical treatment of" a patient. By using the phrase "in the treatment of," rather than "in

[21] Section 8-8 explains the differences between Priority 1, Priority 2, and Priority 3 patients, with all three statuses requiring emergency care. Appendix D, 22d.

[22] At the same time, Shifter also had to monitor traffic conditions for delays or obstructions that would have justified activating lights and sirens. Section 8-2(D) notes as follows: "Lights and sirens may be used to clear traffic and then shut down, if prudent, where no obstruction or delay is present, provided both lights and siren are activated at least 500 feet before any intersection or obstruction to be cleared." Thus, an ambulance driver is not able to simply keep the lights and sirens "on" or "off" for the entire duration of the trip to the emergency room, but must also be watching for traffic delays or issues that would justify activating same.

the medical treatment of," the Legislature necessarily included "medical treatment" and "other treatment" within the immunity conferred by MCL 333.20965(1). Plaintiff cannot just add the word "medical" to MCL 333.20965(1). MCL 333.20965(1) simply does not include the words "medical," "non-medical," or "negligence." This Court should reject Plaintiff's attempt to reword the statute and redefine the issue presented.

Next, Plaintiff devotes several pages to the issue of over-reliance on dictionary definitions (Plaintiff's supplemental brief, 10-13). Defendant does not quarrel with the idea that a dictionary definition can lead a court astray. This Court need only look at the Court of Appeals dissent for an example of a dictionary definition being so unworkable that the judge has to edit the definition to apply it.

And Defendant does not disagree that the context of a statutory term or phrase is critical. A dictionary definition for "treatment" in the context of the EMSA cannot ignore the reality that (a) emergency medical services are not performed by physicians in a sterile, stable environment; and (b) emergency medical services arrive via ambulance and frequently involve transporting a plaintiff by that same ambulance to an emergency room. The EMSA is replete with references to transportation of patients. Any dictionary definition of treatment that limits itself to the clinical setting, while ignoring on-scene emergency services and transportation to a hospital, cannot suffice within the context of the EMSA. This is, of course, why the Court of Appeals' use of a broader, more meaningful definition allows for the context of the EMSA to be given full effect.

Next, Plaintiff contends that allowing an ambulance driver (who will be a licensed medical first responder by statute) to be sued for ordinary negligence harmonizes with other statutory schemes (Plaintiff's brief, 14). The problem for Plaintiff is that allowing ambulance drivers to be sued for ordinary negligence runs contrary to MCL 333.20965(1), which does not

limit "treatment" whatsoever. And, to the extent that another statute operates to change "treatment" into "medical treatment," it will not be construing the statute, but impermissibly rewriting the statute.

Moreover, the other subsections of MCL 333.20965 reflect a Legislative intent to provide immunity for actions that do not require being in the same ambulance compartment as a plaintiff. Subsections (a) through (n) of MCL 333.20965 provide an exhaustive list of job titles which would never involve being at a patient's side, but who are nevertheless entitled to immunity. For example, the MCL 333.20965(1) immunity extends to various hospital and educational institution employees. If "treatment" was limited to a narrow class of tasks only capable of being performed by paramedics, it is unclear how anyone could even allege that an educational institution negligently treated a plaintiff. Instead, the Legislature recognized the breadth of its phrase "in the treatment of" by also recognizing a broad category of who may require immunity. Stated otherwise, if the Legislature expected a narrow definition of treatment, there would be no reason to broadly confer immunity to so many classes of individuals.

Beyond that, Plaintiff's specific applications are misplaced. First, Plaintiff suggests that MCL 333.20965(1) should be construed to not apply to transporting a patient to the emergency room because MCL 257.401 creates vicarious liability for the owner-operator of a vehicle (Plaintiff's brief, 14-15). However, the Legislature did not expressly indicate that MCL 333.20965(1) is subservient to MCL 257.401. The Legislature is certainly capable of recognizing that certain immunity does not prevent expand or reduce liability arising elsewhere. See e.g, MCL 257.401(5)("Subsections (3) and (4) shall not be construed to expand or reduce, except as otherwise provided by this act, the liability of a person engaged in the business of leasing motor vehicles or to impair that person's right to indemnity or contribution, or both.").

The Legislature did not include such a provision within MCL 333.20965. In fact, the Legislature did the opposite—it expressly recognized that MCL 333.20965(1) should not be construed to limit immunity provided elsewhere. See MCL 333.20965(5).

Second, Plaintiff erroneously suggests that an injured ambulance patient would be without any remedy for a vehicular accident. Plaintiff offers no explanation as to why No Fault insurance, specifically Personal Injury Protection ("PIP") benefits, would not be available to an injured ambulance passenger. See MCL 500.3106; MCL 500.3114(2)(recognizing that passengers in vehicles are entitled to No Fault benefits from the insurer of the motor vehicle, with ambulances not being excepted from same). Beyond that, Plaintiff would also have a potentially viable lawsuit against the driver of a non-ambulance vehicle involved in a vehicular accident with an ambulance, Plaintiff in this matter has sued the driver of the other vehicle that was part of the second accident, and Plaintiff's very first lawsuit was against his cousin for causing the first accident. And this was in addition to Plaintiff's medical malpractice lawsuit. And, importantly, had Plaintiff been able to remotely establish "gross negligence," the lawsuit against Defendant could have continued notwithstanding MCL 333.20965(1). Plaintiff has certainly had numerous litigation targets and is in no risk of being unable to recover. But even without these additional lawsuits, the No Fault provisions Plaintiff a recovery for certain economic damages, without regard to fault. Limiting an ambulance passenger to PIP benefits, lawsuits for non-economic damages against individuals and entities that are not regulated by the EMSA, and gross negligence lawsuits against EMS providers strikes a proper balance between (a) allowing an injured person to recover; and (b) encouraging employment in the EMS field without exposing such employees to liability absent gross negligence. There is no need to rewrite MCL 333.20965(1) to achieve a different result.

Next, Plaintiff suggests that there is some relevance to governmental employees and entities retaining liability for negligent operation of vehicles pursuant to MCL 691.1405:

> This is especially so in light of the traditional status of governmental immunity and the favored status of governmental tortfeasors. MCL 691.1405 makes it clear that even a governmental agency may be held civilly accountable for negligent operation. Can it be reasonably thought that the Michigan Legislature meant to provide private ambulance operators with even greater immunity than that which the State retains for itself? [Plaintiff's brief, 16.]

The Legislature is certainly well within its power to offer legal protections to non-government entities that are greater than those it affords government entities. Obviously, the Legislature has limited medical malpractice lawsuits by requiring affidavits of merit that are not required in tort lawsuits against government agencies. MCL 600.2912b. Product liability lawsuits are limited by damages caps that are not available in lawsuits against government agencies. MCL 600.2946a(1). There are undoubtedly numerous other examples of the Legislature providing uniquely enhanced rights, privileges, defenses, and immunities to non-governmental entities and not otherwise made equally available to government entities. The Legislature is capable of acting without being entirely self-serving.

What Plaintiff is really advocating for is refusing to apply the statute as written. Although the Legislature could have modified "treatment," with "medical treatment" or "direct medical treatment to a patient," the Legislature did not do so. Instead, the Legislature used the broad word "treatment" within the broad phrase "in the treatment of a patient." Plaintiff apparently disagrees with the wisdom of the Legislature in providing enhanced immunity for private ambulance operators; however, it is the Legislature's power to do so. And that is exactly what the Legislature has done.

Again, it bears repeating that the Legislature has not provided emergency services providers with complete immunity. Instead, the Legislature has set the standard for such

lawsuits at gross negligence. A plaintiff is not barred from recovering where an emergency services provider is grossly negligent. However, if a plaintiff can only allege negligence, then there is no recovery. This "gross negligence" standard is not unique to emergency services. See e.g. MCL 691.1407(2)(certain governmental immunity absent gross negligence). In fact, as Plaintiff observes, there is a "Good Samaritan" statute, MCL 691.1502(1) that protects hospital employees responding to emergencies with immunity from suit absent gross negligence. Obviously, MCL 333.20965(1) reflects a Legislative intent to clothe the EMS system—a system based entirely on responding to emergencies—with the same protection for their actions. Plaintiff's reference to MCL 691.1502(1) actually confirms the wisdom and intent of the Legislature in protecting emergency workers and entities from lawsuits absent gross negligence.

Plaintiff also expresses concern with a possible conflict between MCL 333.20965(1) and MCL 691.1405, which holds governmental agencies liable for the negligent operation of government-owned vehicles (Plaintiff's brief, 16). Plaintiff acknowledges that this issue would only arise with government-owned ambulances, and is not applicable to the instant matter (*id.*). Regardless, Plaintiff forgets that MCL 691.1412 expressly extends to any governmental agency a defense that is available for a private entity. Accordingly, to the extent that there is any conflict between MCL 333.20965(1) and MCL 691.1405, MCL 691.1412 would dictate that MCL 333.20965(1) would control. Moreover, the common law had long recognized that the more specific statute controls over a less-specific statute. See *Gebhardt v O'Rourke*, 444 Mich 535, 542; 510 NW2d 900 (1994). Inasmuch as transporting an emergency patient by ambulance is a far more specific factual circumstance than general operation of any vehicle, MCL 333.20965(1) would also control without MCL 691.1412. In any event, Plaintiff's concern is unfounded.

On pages 19 and 20, Plaintiff's supplemental brief suggests that if the Legislature had wanted to include "driving" within MCL 333.20965(1) it should have expressly stated so. Again, the Legislature was free to provide broad immunity, without specifying a laundry list of actions, means, and methods that would fall within the definition of "in the treatment of a plaintiff." Moreover, Plaintiff urges a definition that would be strictly limited in time—only applying to very specific acts of individuals and only during that immediate time where it is being performed: "For immunity to apply, the negligent act or omission must occur 'in the treatment' not at some earlier or later time." Plaintiff's argument facially fails when considering that there is no "immediate time" where an "omission" is occurring. As one example, if a paramedic failed to take a certain patient's vital signs enough times, that omission would not be within the treatment, subjecting the paramedic to liability. Ultimately, the narrowing urged by Plaintiff would result in the equivalent of the exception swallowing the rule, with more and more limitations of the conferred immunity. Inasmuch as the Legislature chose the non-specific and broad phrase "in the treatment of," rather than other narrower phrases, this Court must construe MCL 333.20965(1) as applying to all treatment of a plaintiff, including the essential transportation to the emergency room.

Next, Plaintiff contends that the Merriam-Webster dictionary definition fails because it could extend to an ambulance stopping at McDonald's or going to bar, if those were routine or customary activities (Plaintiff's brief, 20-21). Obviously, if EMS staffers eat at McDonald's every day, they are not doing so with respect to the patient. MCL 333.20965(1) specifically references "in the treatment of a plaintiff," not customary actions generally. The Court of Appeals majority recognized that the EMSA strictly and comprehensively regulates ambulance operations and transportation of patients; to the extent that emergency providers are providing

such transportation to an emergency patient, it is part and parcel of the treatment of that patient. Plaintiff's resort to extreme hypotheticals must be rejected.[23] The EMSA governs emergency services and ambulance operations, of which transporting a patient is of paramount importance. Not surprisingly, the EMSA confer immunity on the providers of those services. MCL 333.20965(1). Plaintiff's arguments to the contrary are without merit.

d. Policy-Related Issues Support the Lower Courts' Rulings

This Court must be mindful that this issue is not merely one involving the liability of an ambulance company, it also involves the liability of individual ambulance drivers. A ruling by this Court that MCL 333.20965(1) does not extend to transporting the patient in an ambulance will open up ambulance drivers to liability and be the beginning step in the gradual erosion of the immunity conferred to all EMS staffers. The Legislature has spoken with a very broad immunity provision that, by ordinary definition, extends to driving an ambulance—at least in those circumstances where it is transporting a patient to an emergency room. If this Court rewrites MCL 333.20965(1), the obvious result is that (a) there will be a disincentive for individuals to pursue careers in emergency medicine; and (b) the costs for ambulance operations will increase all the more. Given the plain language of MCL 333.20965(1), this Court should simply

[23] Plaintiff contends that this Court must not allow combining the efforts of the EMS team into the "treatment of the plaintiff," but must separately consider each finite act by each staffer to determine if there is immunity (Plaintiff's brief, 20-22). Again, while this seemingly benefits Plaintiff in this lawsuit, such a construction would ultimately render MCL 333.20965(1) meaningless by excluding omissions and decisions. As one example, the emergency medical providers may have to decide which emergency room to transport a patient. Is that decision an act "in the treatment of a plaintiff." If the emergency medical providers are not immune for such a decision, could they be sued if the emergency room chosen had superior staff but was known to those EMS providers to be extraordinarily busy that day? Must the EMS providers choose an inferior hospital with a shorter waiting time or would that expose the providers to liability also? And, here, Plaintiff has specifically alleged that the delay in transporting Plaintiff caused his damages. If that is actionable, then an ambulance driver could be sued for not driving too slowly or inadvertently taking a wrong turn, causing delays. It is to avoid this potential "exception swallowing the rule" that the Legislature chose the broad phrase "in the treatment of"

recognize the broad grant of immunity and leave it to the Legislature to amend the EMSA if and when it decides that the immunity granted is no longer consistent with its original public policy determination.

As an initial matter, an ambulance operation cannot be licensed unless it operates 24 hours a day, 7 days a week. MCL 333.20921(1)(a). This requires significant staffing. The MDHHS website devoted to careers in Emergency Medicine states as follows:

> A job in Emergency Medical Services could be the beginning of a whole new career.
>
> Right now in Michigan, there are over 500 job openings for EMS professionals. As an Emergency Medical Technician (EMT) or paramedic, you'll not only make a real difference in people's lives, you'll gain a foundation for other careers in healthcare as well.
>
> Is a career as an EMT or paramedic right for you? If you answer yes to most of the questions below, you could be a perfect fit:
>
> Do you want to help people?
> Are you cool and calm under stress?
> Can you think fast on your feet?
> Do you like excitement and adventure?
> Are you good at working with people?
> Are you interested in a career in healthcare?
>
> Emergency Medical Technician or paramedic?
>
> Becoming an EMT requires less training (and cost) than becoming a paramedic. But a paramedic is trained to perform more advanced emergency medical care and use special equipment that EMTs are not qualified to operate.
>
> Both EMTs and paramedics provide emergency care and transportation and are critical links from the scene of an emergency to the health care system.[24]

Thus, there are already 500 vacant emergency positions. The website notes that the "average salary for an EMT in Michigan is around $30,000 a year," and that the "average salary for paramedics is around $39,000 a year. *Id.*

[24] https://www.michigan.gov/mdhhs/0,5885,7-339-73970_5093_28508_86966---,00.html

As it is the emergency medical services profession involves substantial stress, difficult hours, tough work environments, and minimal salary. It is not surprising that there are 500 job openings. In fact, the situation is bleak enough that there are statutory provisions relaxing standards in sparsely populated counties. MCL 333.20921a. Imposing personal liability on ambulance drivers—typically EMTs—would only make that situation worse.

Here, the Legislature has chosen to balance the interests of all parties by allowing patients to sue emergency services providers for gross negligence, but only for gross negligence. An emergency room physician faces comparable stress, but gets to do so in a cleaner, sterile, and more comfortable emergency room location. A paramedic or EMT may have to provide medical care to an injured person trapped inside a car during a snowstorm. And an EMT may have to drive that patient urgently to the emergency room during that same snowstorm. While the EMT is driving, he or she will have to continue to monitor the condition of the patient, be alert for traffic situations necessitating the use of lights and siren, and be in communication with dispatches and hospital emergency rooms. The Legislature's Good Samaritan statute protects hospital workers who are willing to respond to emergencies in the hospital environment by immunizing them against ordinary negligence. MCL 691.1502(1). The Legislature extended this same immunity to emergency medical services providers who do the very same thing by responding to emergencies every single day—only doing so in all sorts of inconvenient and dangerous locations. This Court should decline to undo what the Legislature has done. Instead, this Court should either deny Plaintiff's application for leave to appeal or affirm the Court of Appeals' majority ruling.

CONCLUSION AND REQUEST FOR RELIEF

Defendant Swartz respectfully requests that this Honorable Court deny Plaintiff's application for leave to appeal or otherwise affirm the ruling of the Michigan Court of Appeals majority.

Respectfully submitted,

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Dated: December 13, 2019

STATE OF MICHIGAN

IN THE MICHIGAN SUPREME COURT

ON APPEAL FROM THE MICHIGAN COURT OF APPEALS AND THE CIRCUIT COURT FOR THE COUNTY OF GENESSEE

CALEB GRIFFIN,

Plaintiff-Appellant,

v

SWARTZ AMBULANCE SERVICE,

Defendant-Appellee,

and

SARAH ELIZABETH AURAND

Defendant.
_____/

MSC Docket No. 159205

COA Docket No. 340480

Lower Court No.: 14-103977-NI

DEFENDANT SWARTZ AMBULANCE SERVICE'S APPENDIX TO SUPPLEMENTAL BRIEF